UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 13 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven E. Snow
River Valley Recycling, LLC
288 West South Tec Drive
Kankakee, Illinois 60901

Dear Mr. Snow:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves River Valley Recycling, LLC, docket no. **CAA-05-2016-0022**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on April 13, 2016.

Pursuant to paragraph 62 of the CAFO, River Valley Recycling, LLC must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case, docket number **CAA-05-2016-0022**.

Please direct any questions regarding this case to Mark Palermo, Associate Regional Counsel, (312) 886-6082.

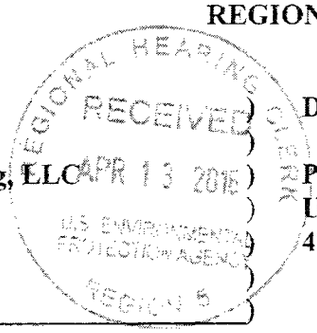
Sincerely,

Nathan A. Frank, P.E.
Section Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Mark Palermo, Associate Regional Counsel/C-14J
Yasmine Keppner-Bauman, Illinois EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:	)	**Docket No. CAA-05-2016-0022**
River Valley Recycling, LLC	)	**Proceeding to Assess a Civil Penalty**
Kankakee, Illinois,	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is River Valley Recycling, LLC (River Valley), a limited liability company doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The CAA establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and productive capacity of its population. 42 U.S.C. § 7401(b)(1).

Title VI of the CAA - Protection of Stratospheric Ozone –Recycling and Emissions Reduction

10. Title VI of the CAA, 42 U.S.C. § 7671 *et seq.*, provides for the protection of the stratospheric ozone layer.

11. Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), requires the Administrator of the EPA to publish a list of class I substances, including certain chlorofluorocarbons and other chemicals, and to add to that list any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer.

12. Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), requires the Administrator of the EPA to publish a list of class II substances, including certain hydrochlorofluorocarbons and other chemicals, and to add to that list any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

13. Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), provides, in part, that the Administrator of the EPA shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during the service, repair, or disposal of appliances and industrial process refrigeration. Section 608(a)(3) of the CAA provides that the regulations under Section 608(a) shall include requirements that – (A) reduce the use and emission of class I and class II substances to the lowest achievable level and (B) maximize the recapture and recycling of such substances. Further, Section 608(b)(1) of the CAA, 42 U.S.C. § 7671g(b)(1), mandates inclusion in the regulations of requirements that class I or class II substances contained in bulk in appliances, machines, or other goods be removed from each such appliance, machine, or other good prior to disposal of such items or its delivery for recycling.

14. On May 14, 1993, pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA published regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration. See 58 Fed. Reg. 28712. These regulations, which have been subsequently amended, are codified in 40 C.F.R. Part 82, Subpart F. As stated in 40 C.F.R. § 82.150(a), the purpose of the regulation is to, *inter alia*, reduce emissions of class I and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances.

15. "Appliance" is defined in Section 601(1) of the CAA, 42 U.S.C. § 7671(1), and 40 C.F.R. § 82.152 as any device that contains and uses a class I or class II substance as a refrigerant and that is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

16. 40 C.F.R. § 82.150(b) states that 40 C.F.R. Part 82, Subpart F applies to, *inter alia*, persons disposing of appliances, including small appliances and Motor Vehicle Air Conditioners (MVAC).

17. "Small appliance" is defined in 40 C.F.R. § 82.152 as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

18. "MVAC" is defined at 40 C.F.R. §§ 82.152 and 82.32(d) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle.

19. "Disposal" is defined in 40 C.F.R. § 82.152 as the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or (3) the disassembly of any appliance for reuse of its component parts.

20. 40 C.F.R. § 82.156(f) requires, in part, that persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioner, MVAC, or MVAC-like appliance must either: (1) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.156(g) or (h); or (2) verify that the refrigerant has been evacuated from the appliance or shipment of appliances

previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

21. 40 C.F.R. § 82.166(i) requires that persons disposing of small appliances, MVACs, and MVAC-like appliances must maintain copies of signed statements obtained pursuant to 40 C.F.R. § 82.156(f)(2).

Section 112 of the CAA – Hazardous Air Pollutants – Secondary Aluminum Production

22. Section 112 of the CAA sets forth a national program for the control of Hazardous Air Pollutants (HAPs). 42 U.S.C. § 7412. As originally promulgated in the CAA Amendments of 1970, Section 112 directed EPA to publish a list of HAPs. HAP was defined as "an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness." 42 U.S.C. § 1857c-7 (1971). At that time, Congress directed EPA to establish HAP standards that provided "an ample margin of safety to protect the public health from such hazardous air pollutant." *Id.*

23. Through the CAA Amendments of 1990, Congress replaced the then-existing Section 112 and established a new program for the control of HAPs. H.R. Rep. No. 101-490, 101st Cong., 2d Sess., pt 1 at 324 (1990). With the 1990 amendments, Congress itself established a list of 188 Hazardous Air Pollutants (HAPs) believed to cause adverse health or environmental effects. 42 U.S.C. § 7412(b)(1).

24. Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1), identifies 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin) and dibenzonfurans (furan) as HAPs under the CAA.

25. Congress directed EPA to publish a list of all categories and subcategories of major sources and area sources of HAPs. 42 U.S.C. § 7412(c). Congress further directed EPA to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAPs listed. 42 U.S.C. § 7412(d)(1). These emission standards must require the maximum degree of reduction in emissions of HAPs that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. 42 U.S.C. § 7412(d)(2). To the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP, Congress authorized EPA to promulgate "design, equipment, work practice, or operational" standards as a process, method, system, or technique to achieve reductions in emissions of HAPs. 42 U.S.C. § 7412(d)(2).

26. The emission standards promulgated under Section 112 of the 1990 Amendments to the CAA, 42 U.S.C. § 7412, are known as the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for Source Categories or "MACT" ("maximum achievable control technology") standards. These emission standards are found in Part 63 of Title 40 of the Code of Federal Regulations.

27. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), provides that after the effective date of any emission standard, limitation, or regulation promulgated pursuant to Section 112 of the CAA, no person may operate a source in violation of such standard, limitation, or regulation.

28. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), and effective March 23, 2000, EPA promulgated regulations governing the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production in 40 C.F.R. Part 63, Subpart RRR (NESHAP Subpart RRR). 65 Fed. Reg. 15710 (March 23, 2000).

29. The NESHAP Subpart RRR applies to the owner or operator each secondary aluminum production facility as defined at 40 C.F.R. § 63.1503. 40 C.F.R. § 63.1500(a).

30. The NESHAP Subpart RRR at 40 C.F.R. § 63.1503 defines "secondary aluminum production facility" as meaning any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.*, melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling.

31. The requirements of the NESHAP Subpart RRR pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to certain affected sources located at a secondary aluminum production facility that is an area source of HAPs as defined in §63.2. 40 C.F.R. § 63.1500(c). Such affected sources include each new and existing sweat furnace. *Id.*

32. "Sweat furnace" is defined at 40 C.F.R. § 63.1503 as "a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting point iron remains in solid form."

33. The NESHAP Subpart RRR at 40 C.F.R. § 63.1501(a) states that the owner or operator of an existing affected source constructed before February 11, 1999, must comply with the requirements of the NESHAP Subpart RRR by March 24, 2003.

34. The NESHAP Subpart RRR at 40 C.F.R. § 63.1505(f) provides that the owner or operator of a sweat furnace at a secondary aluminum production facility must not discharge or cause to be discharged into the atmosphere emissions in excess of 0.80 nanograms of D/F TEQ per dry standard cubic meter (3.5×10^{-10} grams per dry standard cubic feet) at 11 percent oxygen. However, 40 C.F.R. § 63.1505(f)(1) provides that the owner or operator is not required to conduct a performance test to demonstrate compliance with this D/F emission standard, provided that on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature at 1600 °F or greater.

35. Pursuant to 40 C.F.R. § 63.1506(h)(1) of the NESHAP Subpart RRR, the owner or operator of a sweat furnace controlled by an afterburner must maintain the three-hour block average operating temperature of each afterburner at or above 1600 °F if a performance test was not conducted, and the afterburner meets the specifications of 40 C.F.R. § 63.1505(f)(1).

36. The NESHAP Subpart RRR at 40 C.F.R. § 63.1510(g) requires the owner or operator of an affected source using an afterburner to comply with the requirements of Subpart RRR to install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner.

37. The NESHAP Subpart RRR at 40 C.F.R. § 63.1517(b)(2)(i) states that each affected source with emissions controlled by an afterburner shall maintain records of 15-minute block average afterburner operating temperature, including any period when the average temperature in

any 3-hour block period falls below the compliant operating parameter value with a brief explanation of the cause of the excursion and the corrective action taken.

38. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013 and may assess a civil penalty of up to $37,500 per day of violation up to a total of $320,000 for CAA violations that occurred after December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

39. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

40. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Complainant's Factual Allegations and Alleged Violations

41. Respondent owns and operates a scrap metal recycling and secondary aluminum production facility (the Facility) at 288 West South Tec Drive in Kankakee, Illinois.

42. Respondent is a "person" as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

43. Respondent is a person who takes the final step in the disposal process of small appliances, MVACs, and MVAC-like appliances and, consequently, is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

44. The Facility is a "secondary aluminum production facility," as that term is defined in the NESHAP Subpart RRR, and an area source of HAPs.

45. The Facility includes two aluminum sweat furnaces, each of which is a "sweat furnace," as that term is defined in the NESHAP Subpart RRR. The emissions from each sweat furnace are controlled by a dedicated afterburner.

46. The Facility's sweat furnaces are "affected sources" subject to the NESHAP Subpart RRR requirements pertaining to D/F emissions and associated operating, monitoring, reporting, and recordkeeping requirements.

47. The emissions from each sweat furnace at the Facility are controlled by a dedicated afterburner.

48. Respondent did not conduct a D/F emission performance test on the Facility's sweat furnaces. Rather, Respondent relies upon operating and maintaining an afterburner with an operating temperature of 1600 °F or greater per 40 C.F.R. § 63.1505(f) to comply with the NESHAP Subpart RRR.

49. On March 31, 2011, EPA inspected the Facility for compliance with the CAA.

50. On May 11, 2011, EPA issued, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, a Request for Information to Respondent seeking information about the Facility's compliance with the CAA. On July 5, 2011, Respondent submitted a response to EPA.

51. On July 27, 2011, EPA issued, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, a second Request for Information to Respondent seeking information about the Facility's compliance with the CAA. On August 16, 2011, Respondent submitted a response to EPA.

52. Based on information collected during the March 31, 2011 inspection and from Respondent's July 5, 2011 response to EPA's Section 114 Request for Information, Respondent

accepted for disposal "small appliances" and "MVACs," as those terms are defined in 40 C.F.R. Part 82, Subpart F, at the Facility between May 1, 2010 and March 31, 2011.

53. Based on information collected during the March 31, 2011 inspection and from Respondent's July 5, 2011 response to EPA's Section 114 Request for Information, Respondent did not use equipment to recover refrigerant from small appliances or MVACs between May 1, 2010 and March 31, 2011.

54. In its July 5, 2011 response to EPA's Section 114 Request for Information, Respondent stated that it did not require verification statements attesting that the refrigerant had been evacuated and recovered prior to delivery of small appliances or MVACs to the Facility between May 1, 2010 and March 31, 2011.

55. Based upon afterburner monitoring data provided by Respondent in response to EPA's Information Request, the 3-hour block average afterburner temperature for each of the Facility's afterburners has dropped below the 1600 °F minimum operating temperature multiple times between May 1, 2010 and June 3, 2011. The afterburner temperature excursions are documented in Table No. 1 and No. 2 below.

Table 1: Furnace 1 - Afterburner Temperature Excursions

Date	Duration (hours)	Minimum Temperature During Event (Degrees Fahrenheit)
5/2/2010	0.25	1547.8
1/11/2010	1.25	1194.6
1/18/2011	0.25	1585.2
4/12/2011	4.75	926.9

Table 2: Furnace 2 - Afterburner Temperature Excursions

Date	Duration (hours)	Minimum Temperature During Event (Degrees Fahrenheit)
8/15/2010	1.5	1159
9/9/2010	4.5	1576.8
9/12/2010	3.25	1574.1
9/12/10-9/13/10	7.5	1542.6
10/14/2010	0.25	1599.2
11/1/2010	0.25	1582
12/1/2010	0.25	1508
3/13/2011	5.5	795.1
3/15/2011	2.5	1125.3
6/2/11-6/3/11	12.5	1503.6

56. At the time of the afterburner temperature excursions in Paragraph 55 above, River Valley did not document and explain the cause of each excursion and corrective action taken in accord with 40 C.F.R. § 63.1517(b)(2)(i).

57. On October 13, 2011, EPA issued a Finding of Violation (FOV) to Respondent and on December 6, 2011, EPA met with Respondent to discuss the violations presented in the FOV.

58. On January 14, 2014, Region 5 sent Respondent a Request for Information pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, to obtain records and other information to assess whether River Valley achieved and maintained compliance with 40 C.F.R. Part 82, Subpart F and the NESHAP Subpart RRR after the December 2011 FOV conference. Respondent provided a response dated March 20, 2014.

59. Based on Respondent's March 20, 2014 response to EPA's Request for Information, at various times between January through October 2013, Respondent failed to retain records of 15-minute block average afterburner operating temperatures. Specifically, from January through October 2013, Respondent was unable to produce 15-minute block average afterburner operating temperature data records for both sweat furnaces at the Facility, indicating in its response to the

Request for Information that such records were lost due to being "accidentally deleted from the South Tec Facility server." In addition, there are instances between August 2011 and January 2014 (2011: 6 events; 2012: 15 events; 2013: 5 events; 2014: 2 events) where Respondent failed to either retain records or had incorrect records of 15-minute block average afterburner temperatures due to what Respondent attributes to data logger malfunctions.

60. Respondent has violated 40 C.F.R. Part 82, Subpart F, and the NESHAP Subpart RRR as follows:

a. Count 1 - For the period of May 1, 2010 through March 31, 2011, Respondent accepted small appliances and MVACs for disposal without either recovering any remaining refrigerant from such appliances or MVACs in accordance with 40 C.F.R. § 82.156(g) or (h) or verifying through signed statements that the refrigerant has been evacuated from such appliances or MVACs previously, in violation of Title VI of the CAA and its implementing regulation at 40 C.F.R. § 82.156(f).

b. Count 2 – On the dates indicated in Paragraph 55 above, Respondent failed to maintain the temperature of afterburners controlling D/F emissions from its Facility's sweat furnaces at or above 1600 °F on a 3 hour-block average and failed to contemporaneously document and explain the cause of each excursion and corrective action taken, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations at 40 C.F.R. §§ 63.1506(h)(1) and 63.1517(b)(2)(i).

c. Count 3- For the period of January through October 2013 as described in Paragraph 59 above, Respondent failed to maintain records of 15-minute block average operating temperatures for the afterburners controlling D/F emissions from its Facility's sweat furnaces, in

violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulation at 40 C.F.R. § 63.1510(g).

Civil Penalty

61. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, consideration of Respondent's financial ability to pay a penalty, cooperation, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is $4,400.

62. Within 30 days after the effective date of this CAFO, Respondent must pay a $4,400 civil penalty by one of the following methods:

a. For checks sent by regular U.S. Postal Service mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

b. For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), Respondent must send a casher's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

63. The check must note Respondent's name and the docket number of this CAFO.

64. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Mark J. Palermo (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

65. This civil penalty is not deductible for federal tax purposes.

66. If Respondent does not pay timely the civil penalty or any stipulated penalties due under Paragraph 78, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

67. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

68. Respondent must complete a supplemental environmental project (SEP), which is designed to protect the environment and public health by increasing energy efficiency (and correspondingly reducing emissions of air toxics and greenhouse gases) associated with heating and cooling of the Kennedy Middle School in Kankakee, Illinois (Recipient), part of the Kankakee School District, through the installation of new, more-energy efficient windows at the school.

69. Respondent shall provide for the replacement of two, 65 year-old (original) windows with energy-efficient windows, aluminum framed, with 1 inch glazing at the Kennedy Middle School in Kankakee, Illinois. Respondent must spend $24,400 towards the implementation of the SEP.

70. Project Completion Schedule. Completion of the SEP must occur pursuant to the following schedule:

a. Within 60 days of the effective date of this CAFO, Respondent must have selected a vendor and/or contractor to complete the installation work described in paragraph 69, above.

b. On or before June 1, 2016, Respondent's chosen contractor must submit to Respondent a workplan and cost estimate for completion of the SEP installation work described in paragraph 69, above.

c. The SEP shall be completed between the months of June and August 2016.

d. In the event the SEP is not completed before July 1, 2016, Respondent shall fund a segregated account to pay for completion of the SEP.

e. In its sole discretion, EPA may grant additional time to complete the SEP.

71. Respondent certifies that River Valley Recycling, LLC is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the Effective Date of this CAFO. Respondent further certifies that River Valley Recycling, LLC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

72. Respondent certifies that River Valley Recycling, LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that it is signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

73. Respondent must submit a SEP completion report to EPA by the earlier of 45 days following the completion of the SEP or 270 days from the Effective Date of this CAFO, unless an extension of time is provided by EPA in its sole discretion. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any problems executing the SEP and the actions taken to correct the problems;

c. For the SEP described in Paragraph 6869, above, Respondent must provide certification from the Recipient that the funds were spent in

conformity with the SEP as described. This certification should include an itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services. If the Recipient has not yet completed the project, certification from the Recipient that any unused funds are being held in an account earmarked for the specified purpose, and a target date for completion of the project;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

74. Respondent must submit the SEP completion report described in Paragraph 73 by express mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 64, above, and a written notification to Mark J. Palermo, Associate Regional Counsel, at the address provided in Paragraph 64 above, that the SEP completion report has been submitted.

75. In the SEP completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

76. Following receipt of the SEP completion report described in Paragraph 73, above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days, or additional time as provided by EPA in writing, from date of Respondent's receipt of such notice to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report, and EPA will seek stipulated penalties under Paragraph 78, below.

77. If EPA exercises option b in Paragraph 76, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any reasonable requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 78, below.

78. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of $24,400, but Respondent will receive credit towards the penalty amount for any sums that were satisfactorily expended towards the SEP pursuant to the requirements of this CAFO.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it expended at least $21,960, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than $21,960, Respondent must pay a stipulated penalty in the amount of the difference between $21,960 and the amount actually spent.

d. If Respondent did not timely submit the SEP completion report required under Paragraph 64 above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$75	1st through 14th day
$125	15th through 30th day
$150	31st day and beyond

79. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

80. Respondent must pay any stipulated penalties under Paragraph 78, above, within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 62, above, and will pay interest and nonpayment penalties on any overdue amounts.

81. Any public statement that Respondent makes referring to the SEP must include the following language: "River Valley Recycling, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against River Valley Recycling, LLC for alleged violations of the Clean Air Act."

82. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent

in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

74. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

83. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: palermo.mark@epa.gov (for Complainant), and thor.ketzback@bryancave.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. ⌖ 22.6.

84. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

85. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

86. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in Paragraph 84, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

88. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

89. The terms of this CAFO bind Respondent, its successors and assigns.

90. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

91. Each party agrees to bear its own costs and attorneys fees in this action.

92. This CAFO constitutes the entire agreement between the parties.

River Valley Recycling, LLC, Respondent

3/28/16
Date

Steven E. Snow, Manager
River Valley Recycling, LLC

United States Environmental Protection Agency, Complainant

4/8/16
Date

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-8-16
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: River Valley Recycling, LLC (Kankakee, Illinois)
Docket Number: CAA-05-2016-0022

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on [April 13, 2016], this day in the following manner to the addressees:

Copy by email
return-receipt requested:

Thor Ketzback
thor.ketzback@bryancave.com

Copy by e-mail to
Complainant:

Mark Palermo
palermo.mark@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: April 13, 2016 L Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A